

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL DEAN,

Plaintiff,

Case No. 1:17-cv-669

v.

Honorable Robert J. Jonker

WILLIAM COONS,

Defendant.

OPINION

This is a civil rights action brought by a state prisoner under 42 U.S.C. § 1983. The Court has granted Plaintiff leave to proceed *in forma pauperis*. Under the Prison Litigation Reform Act, PUB. L. NO. 104-134, 110 STAT. 1321 (1996), the Court is required to dismiss any prisoner action brought under federal law if the complaint is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant immune from such relief. 28 U.S.C. §§ 1915(e)(2), 1915A; 42 U.S.C. § 1997e(c). The Court must read Plaintiff's *pro se* complaint indulgently, *see Haines v. Kerner*, 404 U.S. 519, 520 (1972), and accept Plaintiff's allegations as true, unless they are clearly irrational or wholly incredible. *Denton v. Hernandez*, 504 U.S. 25, 33 (1992). Applying these standards, Plaintiff's federal claims will be dismissed for failure to state a claim. Plaintiff's state-law claim will be dismissed without prejudice.

Factual Allegations

Plaintiff Michael Dean presently is incarcerated with the Michigan Department of Corrections (MDOC) at the Gus Harrison Correctional Facility, though the actions about which he complains occurred while he was housed at the Muskegon Correctional Facility (MCF). He sues Trinity Food Service Supervisor William Coons, who was working at MCF.

Plaintiff complains that, on April 18, 2016, while he was performing his food-service job, Defendant Coons “assaulted and battered” him. (Compl., ECF No. 1, PageID.2.) In response to Defendant Coons’ “intentional, unconsented and offensive assault upon his person,” Plaintiff warned Coons that “if he were to ‘[t]ouch[] [him] again’ he would be forced to ‘lay him out.’” (*Id.*, PageID.2-3 (verbatim).) Dean issued a Class I misconduct ticket to Plaintiff for threatening behavior, alleging that he “was told by Inmate Dean (578910) ‘touch me again and I’ll lay you out.’” As a result, Plaintiff was taken to the control center. He told Sergeant Matthews and Inspector Kludy that Defendant Coons had assaulted him, and he asked them to review the video footage. Both officials told Plaintiff that the video did not support his claim. Plaintiff therefore was placed in segregation.

On April 27, 2016, Plaintiff received a formal misconduct hearing. The hearing officer found that “the video footage reflected that Defendant Coons ‘reached out and placed his open hand on . . . [Plaintiff’s] shoulder’ and that ‘[other] staff indicate[d] that [Defendant] Coons said [that] he hit the prisoner.’” (*Id.*, PageID.3 (verbatim).) The hearing officer noted that Defendant Coons had failed to report the pertinent facts in his misconduct report. The hearing officer also noted that “Defendant Coons’ ‘physical contact with [Plaintiff] could be considered to be intentional[,] nonconsensual[,] and intended to physically abuse’ Plaintiff.”” (*Id.*, PageID.3-4

(verbatim.)) Nevertheless, the hearing officer found Plaintiff guilty of threatening conduct and imposed a sanction of 20 days' loss of privileges.

Plaintiff filed several grievances against Defendant Coons and other staff members for assault, falsifying a misconduct report, and violations of MDOC policy. On June 20, 2016, Plaintiff was transferred to the Gus Harrison Correctional Facility.

Plaintiff alleges in Count I that Defendant Coons violated his Eighth Amendment rights by assaulting him. He alleges in Count II that he was deprived of due process under the Fourteenth Amendment by Defendant Coons' failure to include all pertinent facts in the misconduct charge, as required by MDOC policy. In Count III, Plaintiff raises a state-law claim of assault and battery.

Discussion

I. Failure to state a claim

A complaint may be dismissed for failure to state a claim if it fails ““to give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.”” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). While a complaint need not contain detailed factual allegations, a plaintiff’s allegations must include more than labels and conclusions. *Twombly*, 550 U.S. at 555; *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.”). The court must determine whether the complaint contains “enough facts to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 679. Although

the plausibility standard is not equivalent to a “‘probability requirement,’ . . . it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 556). “[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged – but it has not ‘show[n]’ – that the pleader is entitled to relief.” *Iqbal*, 556 U.S. at 679 (quoting FED. R. CIV. P. 8(a)(2)); *see also Hill v. Lappin*, 630 F.3d 468, 470-71 (6th Cir. 2010) (holding that the *Twombly/Iqbal* plausibility standard applies to dismissals of prisoner cases on initial review under 28 U.S.C. §§ 1915A(b)(1) and 1915(e)(2)(B)(i)).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege the violation of a right secured by the federal Constitution or laws and must show that the deprivation was committed by a person acting under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988); *Dominguez v. Corr. Med. Servs.*, 555 F.3d 543, 549 (6th Cir. 2009). Because § 1983 is a method for vindicating federal rights, not a source of substantive rights itself, the first step in an action under § 1983 is to identify the specific constitutional right allegedly infringed. *Albright v. Oliver*, 510 U.S. 266, 271 (1994).

II. Eighth Amendment

The Eighth Amendment imposes a constitutional limitation on the power of the states to punish those convicted of crimes. Punishment may not be “barbarous” nor may it contravene society’s “evolving standards of decency.” *Rhodes v. Chapman*, 452 U.S. 337, 345-46 (1981). The Amendment, therefore, prohibits conduct by prison officials that involves the “unnecessary and wanton infliction of pain.” *Ivey v. Wilson*, 832 F.2d 950, 954 (6th Cir. 1987) (per curiam) (quoting *Rhodes*, 452 U.S. at 346). The deprivation alleged must result in the denial of the “minimal civilized measure of life’s necessities.” *Rhodes*, 452 U.S. at 347; *see also Wilson v. Yaklich*, 148 F.3d 596,

600-01 (6th Cir. 1998). The Eighth Amendment is only concerned with “deprivations of essential food, medical care, or sanitation” or “other conditions intolerable for prison confinement.” *Rhodes*, 452 U.S. at 348 (citation omitted). Moreover, “[n]ot every unpleasant experience a prisoner might endure while incarcerated constitutes cruel and unusual punishment within the meaning of the Eighth Amendment.” *Ivey*, 832 F.2d at 954.

There exist both an objective component and a subjective component to an Eighth Amendment claim. *Santiago v. Ringle*, 734 F.3d 585, 590 (6th Cir. 2013) (citing *Comstock v. McCrary*, 273 F.3d 693, 702 (6th Cir. 2001)). First, “[t]he subjective component focuses on the state of mind of the prison officials.” *Williams v. Curtin*, 631 F.3d 380, 383 (6th Cir. 2011). We ask “whether force was applied in a good-faith effort to maintain or restore discipline, or maliciously and sadistically to cause harm.” *Hudson v. McMillian*, 503 U.S. 1, 7 (1992). Second, “[t]he objective component requires the pain inflicted to be ‘sufficiently serious.’” *Williams*, 631 F.3d at 383 (quoting *Wilson v. Seiter*, 501 U.S. 294, 298 (1991)). This component requires a “contextual” investigation, one that is “responsive to ‘contemporary standards of decency.’” *Hudson*, 503 U.S. at 8, (quoting *Estelle v. Gamble*, 429 U.S. 97, 103 (1976)).

Not “every malevolent touch by a prison guard gives rise to a[n Eighth Amendment] cause of action.” *Hudson v. McMillian*, 503 U.S. 1, 9 (1992). “The Eighth Amendment’s prohibition of ‘cruel and unusual’ punishments necessarily excludes from constitutional recognition *de minimis* uses of physical force, provided that the use of force is not of a sort repugnant to the conscience of mankind.” *Hudson*, 503 U.S. at 9. Significant injury, however, is not a threshold requirement for an excessive force claim. *Wilkins v. Gaddy*, 559 U.S. 34, 38 (2010). Instead, the “‘core judicial inquiry’ [is not] the extent of the injury,” but “whether [the force used] was nontrivial

and “was applied . . . maliciously and sadistically to cause harm.”” *Id.* at 39 (quoting *Hudson*, 503 U.S. at 7).

In the instant case, Plaintiff alleges nothing more than a trivial use of force. Indeed, despite his characterization of the incident as an “unprovoked, intentional, unconsented and offensive assault upon his person” (Compl. ECF No. 1, PageID.2), Plaintiff recites no description of the assault. Instead, he incorporates the hearing officer’s description of the incident, which found that Defendant Coons “reached out and placed his open hand on . . . [Plaintiff’s] shoulder” As described, the use of force was trivial, falling well short the cruel and unusual punishment required by the Eighth Amendment. *Wilkins*, 559 U.S. at 39; *Hudson*, 503 U.S. at 7.

III. Due Process

Petitioner next argues that he was denied his right to due process when Defendant Coons failed to include in his statement of the misconduct charge the pertinent facts leading up to the incident, as required by MDOC policy

Claims under§ 1983 can only be brought for “deprivation of rights secured by the constitution and laws of the United States.” *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 924 (1982). Section 1983 does not provide redress for a violation of a state law. *Pyles v. Raisor*, 60 F.3d 1211, 1215 (6th Cir. 1995); *Sweeton v. Brown*, 27 F.3d 1162, 1166 (6th Cir. 1994). Defendant’s alleged failure to comply with an administrative rule or policy does not itself rise to the level of a constitutional violation. *Laney v. Farley*, 501 F.3d 577, 581 n.2 (6th Cir. 2007); *Brody v. City of Mason*, 250 F.3d 432, 437 (6th Cir. 2001); *Smith v. Freland*, 954 F.2d 343, 347-48 (6th Cir. 1992); *Barber v. City of Salem*, 953 F.2d 232, 240 (6th Cir. 1992); *McVeigh v. Bartlett*, No. 94-23347, 1995 WL 236687, at *1 (6th Cir. Apr. 21, 1995) (failure to follow policy directive does not rise to the

level of a constitutional violation because policy directive does not create a protectible liberty interest). Section 1983 is addressed to remedying violations of federal law, not state law. *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 924 (1982); *Laney*, 501 F.3d at 580-81.

Moreover, because Plaintiff has no due process interest in being falsely convicted of a misconduct charge, he necessarily has no due process interest in the accuracy of the misconduct charge. A prisoner's ability to challenge a prison misconduct conviction depends on whether the conviction implicated any liberty interest. In the seminal case in this area, *Wolff v. McDonnell*, 418 U.S. 539 (1974), the Court prescribed certain minimal procedural safeguards that prison officials must follow before depriving a prisoner of good-time credits on account of alleged misbehavior. The *Wolff* Court did not create a free-floating right to process that attaches to all prison disciplinary proceedings; rather the right to process arises only when the prisoner faces a loss of liberty, in the form of a longer prison sentence caused by forfeiture of good-time credits:

It is true that the Constitution itself does not guarantee good-time credit for satisfactory behavior while in prison. But here the State itself has not only provided a statutory right to good time but also specifies that it is to be forfeited only for serious misbehavior. Nebraska may have the authority to create, or not, a right to a shortened prison sentence through the accumulation of credits for good behavior, and it is true that the Due Process Clause does not require a hearing "in every conceivable case of government impairment of private interest." But the State having created the right to good time and itself recognizing that its deprivation is a sanction authorized for major misconduct, the prisoner's interest has real substance and is sufficiently embraced within Fourteenth Amendment "liberty" to entitle him to those minimum procedures appropriate under the circumstances and required by the Due Process Clause to insure that the state-created right is not arbitrarily abrogated.

Wolff, 418 U.S. at 557 (citations omitted).

Plaintiff does not allege that his major misconduct conviction resulted in any loss of good-time credits, nor could he. The Sixth Circuit has examined Michigan statutory law, as it relates

to the creation and forfeiture of disciplinary credits¹ for prisoners convicted of crimes occurring after April 1, 1987. In *Thomas v. Eby*, 481 F.3d 434 (6th Cir. 2007), the court determined that loss of disciplinary credits does not necessarily affect the duration of a prisoner's sentence. Rather, it merely affects parole eligibility, which remains discretionary with the parole board. *Id.* at 440. Building on this ruling, in *Nali v. Ekman*, 355 F. App'x 909 (6th Cir. 2009), the court held that a misconduct citation in the Michigan prison system does not affect a prisoner's constitutionally protected liberty interests, because it does not necessarily affect the length of confinement. 355 F. App'x at 912; *accord, Taylor v. Lantagne*, 418 F. App'x 408, 412 (6th Cir. 2011). In the absence of a demonstrated liberty interest, Plaintiff has no due-process claim based on the loss of disciplinary credits. *See Bell v. Anderson*, 301 F. App'x 459, 461-62 (6th Cir. 2008).

Even in the absence of a protectible liberty interest in disciplinary credits, a prisoner may be able to raise a due-process challenge to prison misconduct convictions that result in a significant, atypical deprivation. *See Sandin v. Connor*, 515 U.S. 472 (1995). Plaintiff has not identified any significant deprivation arising from his convictions. Here, Plaintiff only lost his privileges for 20 days. A loss of privileges does not rise to the level of an atypical or significant deprivation. *Ingram v. Jewell*, 94 F. App'x 271, 273 (6th Cir. 2004). Plaintiff therefore fails to state a due-process claim.

VI. State-Law Claim

Count III of Plaintiff's claim alleges that Defendant Coons committed assault and battery under state law. The Court declines to exercise its supplemental jurisdiction over Plaintiff's

¹ For crimes committed after April 1, 1987, Michigan prisoners earn "disciplinary credits" under a statute that abolished the former good-time system. MICH. COMP. LAWS § 800.33(5).

state-law claim. “Generally, once a federal court has dismissed a plaintiff’s federal law claim, it should not reach state law claims.” *Experimental Holdings, Inc. v. Farris* 503 F.3d 514, 521 (6th Cir. 2007) (citing *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726 (1966)); *see also Landefeld v. Marion Gen. Hosp.*, 994 F.2d 1178, 1182 (6th Cir. 1993). “Residual jurisdiction should be exercised only in cases where the interests of judicial economy and the avoidance of multiplicity of litigation outweigh our concern over needlessly deciding state law issues.” *Moon v. Harrison Piping Supply*, 465 F.3d 719, 728 (6th Cir. 2006). The Court concludes that the Court’s exercise of its supplement jurisdiction serves no such purpose in the instant case. The Court therefore will dismiss the assault-and-battery claim without prejudice.

Conclusion

Having conducted the review required by the Prison Litigation Reform Act, the Court will dismiss Plaintiff’s federal claims with prejudice for failure to state a claim pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A(b), and 42 U.S.C. § 1997e(c). The Court will dismiss Plaintiff’s state-law claim without prejudice.

The Court must next decide whether an appeal of this action would be in good faith within the meaning of 28 U.S.C. § 1915(a)(3). *See McGore v. Wrigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997). For the same reasons that the Court dismisses the action, the Court discerns no good-faith basis for an appeal. Should Plaintiff appeal this decision, the Court will assess the \$505.00 appellate filing fee pursuant to § 1915(b)(1), *see McGore*, 114 F.3d at 610-11, unless Plaintiff is barred from proceeding *in forma pauperis*, e.g., by the “three-strikes” rule of § 1915(g). If he is barred, he will be required to pay the \$505.00 appellate filing fee in one lump sum.

This is a dismissal as described by 28 U.S.C. § 1915(g).

A Judgment consistent with this Opinion will be entered.

Date: August 11, 2017

/s/ Robert J. Jonker
ROBERT J. JONKER
CHIEF UNITED STATES DISTRICT JUDGE